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CHURCH & THE LAW UPDATE

Terrance S. Carter, B.A., LL.B. - Editor

Updating churches and religious charities on recent legal Developments and risk management considerations

IN THIS ISSUE

This issue of *Church & the Law Update* contains the following articles:

EDITORS NOTE

Church & The Law Update is published without charge for distribution to churches, charities and not-for-profit organizations across Canada and internationally. It is published approximately 3 times a year as legal developments occur. The format is designed to provide a combination of brief summaries of important developments as well as feature commentaries. Where a more lengthy article is available on a particular topic, copies can be obtained from our website at www.charitylaw.ca. The information and articles contained in this *Church & The Law Update* are for information purposes only and do not constitute legal advice and readers are therefore advised to seek legal counsel for specific advice as required.

1. FEDERAL LEGAL UPDATE

A. DONOR BENEFITS AND THE CCCC SPECIAL RELEASE

BY: TERRANCE S. CARTER

Volume 2, Number 1, of the *Church & the Law Update*, first issued in July of 1998, contained a report on a "Special Release" released in April of 1998 by the Canadian Council of Christian Charities ("CCCC"). In that "Special Release" the CCCC suggested that there was a concerted effort being made by Revenue Canada to deny religious charities the ability to issue charitable receipts in many situations involving direct or indirect benefits to donors that traditionally have been accepted. The "Special Release" by the CCCC claimed that the cost to the religious community in Canada from this position by Revenue Canada could amount to three billion dollars ($3,000,000,000.00) per year. As a result, the CCCC suggested that aggressive action be taken against Revenue Canada, including the establishment of a $2,000,000.00 legal defense fund.

It has been learned that the charitable status of Corban Charitable Trust was revoked by Revenue Canada in the Canada Gazette on June 27th, 1998 as a result of a letter sent by Revenue Canada on March 30th, 1998 giving notice of Revenue Canada's intent to deregister Corban Charitable Trust as a registered charity (see file No. A-293-98 in the Federal Court of Appeal of Canada in Toronto with regard to an abortive appeal by Corban Charitable Trust against deregistration). The letter from Revenue Canada indicated that the CCCC had been actively involved in supporting and defending Corban in response to an audit by Revenue Canada that eventually led to Corban's deregistration.

The concern that arises out of the CCCC "Special Release" is that by making an issue about purported restrictions being imposed by Revenue Canada involving donor benefits, the CCCC risks opening a "pandora's box" and jeopardizing the current favorable tax treatment that religious charities enjoy as well as the liberal interpretation that has been adopted by Revenue Canada concerning what are acceptable donor benefits in relation to receiptable donations.

Notwithstanding the concern raised by the CCCC's "Special Release", Revenue Canada has maintained, in the firm's view, a reasonable approach, as evidenced by the following excerpt from Revenue Canada's current Charity Newsletter being issued to all registered charities across Canada:

The Department is concerned about a misconception that is circulating within the charity sector about receipting gifts, and which is causing undue alarm for charities. Based on a misreading of paragraph 15(f) of Interpretation Bulletin IT 110-R3, Gifts and Official Donation Receipts, the message being spread is that a donor cannot make a donation to a charity in which the donor has some interest, whether moral, emotional or otherwise. This is not true -- and unduly extends the concept of detached and disinterested generosity.

A charity may issue official donation receipts for gifts. A gift is defined as a voluntary transfer of property for which the donor receives no valuable consideration in return for the gift. The donor must freely dispose of the property, and the gift must be made from detached and disinterested generosity, out of affection, respect, or charity. This is a long-standing definition on what qualifies as a gift and is not a recent innovation by Revenue Canada. However, the Department is

concerned about donors who stand to gain by making a gift to charity, and the Department is looking into organizations and donors that are using the tax system to benefit the personal and non-charitable interests of the donor, or individuals named by the donor.

In other words, a donor can take an interest in a charity's work, but a donor cannot give to a charity on the understanding that the donor will receive some private benefit in return. For example, a donor who supports a favorite symphony, hospital, library or church with a donation for which the donor does not directly receive something in return, is likely making a gift. There is a distinction between this type of gift and one where the person is paying for a concert ticket or a hospital stay.

Whether there is a gift depends significantly on the circumstances of the particular case.

It is hoped that this statement by Revenue Canada will alleviate much of the unnecessary confusion that has arisen as a result to the CCCC "Special Release". However, the issues may become more clouded as a result of the stated intention by the CCCC to fund numerous legal challenges on this issue. Further updates on this issue will be provided in future issues of the *Church & the Law Update*.

B. REVENUE CANADA'S POSITION ON POLITICAL ACTIVITIES, ADVOCACY AND EDUCATION

One of the most difficult areas of the law facing churches and religious charities in Canada involves the position by Revenue Canada concerning what constitutes acceptable charitable limits on activities as they relate to advocacy, education and political activities. The importance of this issue was recently evidenced by the decision of the Federal Court of Appeal in the *Human Life International v. M.N.R.* (1998), F.C.J. No. 365 issued on March 16th, 1998 (leave to appeal the Supreme Court of Canada denied January 21st, 1999), that resulted in the deregistration of Human Life International due to its political activities. (See *Church & the Law Update*, Vol.2, No.1 for a case comment on the Federal Court of Appeal decision.)

Revenue Canada released a draft Policy Statement entitled "Registered Charities: Education, Advocacy and Political Activities" in June 1998. A copy of this draft Policy Statement can be found at the web site for the Charity Division of Revenue Canada at www.rc.gc.ca . It is expected that a final form of the Policy Statement will be released in the near future. Although there are expected to be changes concerning the presentation of Revenue Canada's position, on this subject, the substantive contents in the statement by Revenue Canada is expected to remain the same.

In this regard, a very helpful paper was recently presented by Carl Juneau, Assistant Director, Charities Division, Revenue Canada for a Continuing Legal Education Program entitled *"Fit to Be Tithed II"* by the Law Society of Upper Canada on November 26th, 1998. The paper by Carl Juneau was entitled *"Defining Charitable Limits: Advocacy, Education, and Political Activities"*. A full copy of the paper is available by contacting the Law Society of Upper Canada, Department of Continuing Legal Education, Osgoode Hall, 130 Queen Street, West, Toronto, Ontario, M5H 2N6.

While the whole paper cannot be presented in this newsletter, there are a number of helpful excerpts that are set out below that help to clarify Revenue Canada's position on what constitutes prohibited political activi-

ties and advocacy for both secular as well as religious charities.

In practice, convincing public or elected officials to alter their position on broad issues usually involves more than just meeting them or writing to them personally. It usually involves creating a climate of public opinion or bringing public pressure to bear by organizing demonstrations, publicity campaigns or letter writing campaigns for instance. Only by laying this groundwork does an effective political organization give itself visibility, gain perceived credibility and create a climate of opinion in which political decisions can be altered. Organizations involved in these practices also tend to use emotive language and rhetoric, because of the latters' ability to stir passions and thereby recruit adherents. It was therefore inevitable that a common law prohibition against excessive political involvement by charities would prevent organizations involved in grass-roots advocacy from obtaining charitable status, and by the same token would restrict grass-roots advocacy by existing charities...

Organizations sometimes engage in advocacy in order to change peoples' behavior. They do this because they consider the behavior in question to be harmful or desirable, either to the individual or to society at large. The messages are many: stop smoking; stay in school; don't buy fur; use public transportation; exercise regularly; keep the family unit intact. Such groups typically claim to offer an educational service to the public. When we look at their eligibility for registration, the key question is most often whether their advocacy significantly takes the form of a well-rounded, reasoned presentation supported by facts aimed at developing in a given audience a balanced understanding of an issue, or whether it is instead based on slanted, incomplete, or distorted information, inflammatory or disparaging terms and attempts to elicit reactions or draws conclusions based on appeals to peoples' emotions..

...the promotion of religion means the promotion of the spiritual teachings of the religious body concerned and the maintenance of the spirit of the doctrines and observances on which it rests or in which it finds expression - thus religion cannot serve merely as a foundation or a cause to which a purpose can conveniently be related. If a religion enjoins the pursuit of some ulterior aim in itself secular, that is not the promotion of religion.

C. REVENUE CANADA ISSUES DRAFT POLICY STATEMENT ON COMMUNITY ECONOMIC DEVELOPMENT PROGRAMS

Revenue Canada has issued a draft Policy Statement entitled *Registered Charities: Community Economic Development Programs*. The draft Policy Statement is available at the Charity Division Web Site at www.rc.gc.ca . Submission on this draft Policy Statement can be made until June 30th, 1999. It is expected that there will be

2. ONTARIO LEGAL UPDATE

A. NEW INVESTMENT POWERS FOR CHARITIES IN ONTARIO

BY: TERRANCE S. CARTER

1. Overview

Proposed amendments to investment powers for trustees in the *Trustee Act* (Ontario) that will have application to charities operating in Ontario were introduced in Bill 25 that received third reading in the Ontario Legislature on November 30th, 1998. The amendments are identical to the proposed amendments which were contained in Bill 122 that had died in December of 1997. The amendments to the *Trustee Act* set out in Bill 25 will not come into force until Royal Proclamation is given, which is not expected for a number of months to allow the Public Guardian and Trustees Office of Ontario sufficient time to provide information to trustees, including directors of charities, concerning the new investment powers that will be in effect.

Proposed amendments to investment powers for trustees in the *Trustee Act* (Ontario) that will have application to charities operating in Ontario were introduced in Bill 25 that received third reading in the Ontario Legislature on November 30th, 1998. The amendments are identical to the proposed amendments which were contained in Bill 122 that had died in December of 1997. The amendments to the *Trustee Act* set out in Bill 25 will not come into force until Royal Proclamation is given, which is not expected for a number of months to allow the Public Guardian and Trustees Office of Ontario sufficient time to provide information to trustees, including directors of charities, concerning the new investment powers that will be in effect.

While there are many positive aspects about the new investment powers, such as authority for investment in mutual funds, there are also some troublesome aspects of the new investment power that will increase the liability exposure for directors of charities, particularly as it relates to liability for inadequate investments.

What follows is an explanation of what the current investment power are under the *Trustee Act* (Ontario), what the amendments are under Bill 25, and what are the practical consequences that will result from the new investment powers once it is proclaimed in force. The comments that follow were originally set out in articles that the author prepared in November of 1996 and January of 1997, which have been updated to reflect the current status of the legislation.

2. Current Trustee Investment Powers

All charities that operate in Ontario are considered by the Public Guardian and Trustee to have trust obligations with respect to their charitable funds. As a result, the members of the controlling boards of those charities, whether they be boards of directors, boards of trustees or boards of management, are considered to have trustee-like duties as fiduciaries in the administration of charitable funds. Historically, trustees were expected to make investment decisions in accordance with what was expected of a "prudent person". In Ontario, this common law rule was modified by imposing a statutory list of permitted investments under the *Trustee Act*, which list dates back to the turn of the cen-

tury when it was more important to preserve property instead of maximizing investment returns.

Generally, the current *Trustee Act* list of investments applies only if the charity is either;

> (a) a corporation or a trust created in Ontario, or;
>
> (b) a charity incorporated federally or in another province with its head office or principle place of business in Ontario; and in either situation has constating documents that:

- are silent about investment powers; or
- describes its investment powers as being "those authorized by law for trustees to invest in", or similar terminology

> Conversely, the current statutory list of investments in the *Trustee Act* generally does <u>not</u> apply if the **charity is** either:

- a corporation or a trust created in Ontario and already has a broad form of prudent investor power in its constating documents; or
- is incorporated federally or in another province and refers to a specific investment power, such as that contained in the *Federal Insurance Companies Act*.

> By contrast, the new "prudent investor" rule under the amendments to the *Trustee Act* will generally apply to most charities located or operating in Ontario.

3. <u>New Investment Powers under the *Trustee Act*</u>

The current statutory list of permitted investments has for some time been recognized as not reflecting economic reality or the effect of inflation. In 1996, the Uniform Law Conference of Canada adopted the model "*Trustee Investment Act*" that, if adopted, would have removed the legal list of permitted investments, established a "prudent investor rule", permitted investments in mutual funds, and permitted delegation of investment decisions to professional investment advisors.

Unfortunately, Bill 25 does not include all of the recommendations of the Uniform Law Conference of Canada. This will result in serious practical problems involving investments for charities in Ontario. As a result, it is important for charities to understand the new investments powers under Bill 25. The principal changes are summarized below as follows:

- The statutory list of investments is to be abolished and replaced with the statutory standard that a trustee "must exercise the care, skill, diligence and judgment that a prudent investor would exercise in making investments". This establishes a new mandatory standard of care for investments for a trustee, and is generally considered to be an objective standard, although it may be applied by the courts in a subjective context
- A trustee will be able to "invest trust property in any form of property in which a prudent investor might invest". In addition, notwithstanding any rule of law that otherwise pro-

hibits the delegation of investment powers, a trustee will be able to invest in mutual funds. This amendment permitting investments in mutual funds is of significant benefit to many charities that are currently investing in mutual funds in Ontario without legal authority. However, since there is no definition of what a "mutual fund" is in Bill 25, it is likely that the courts will be called upon to interpret what is meant by this investment term

- The amendments establish the following list of seven mandatory criteria that a trustee must consider in making an investment in addition to any other criteria that are relevant under the circumstances:

  * general economic conditions;

  * the possible effect of inflation or deflation;

  * the expected tax consequences of investment decisions or strategies;

  * the role that each investment or course of action plays within the overall trust portfolio;

  * the expected total return from income and the appreciation of capital;

  * needs for liquidity, regularity of income and preservation or appreciation of capital;

  * an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

  The Attorney General of Ontario has stated in a public letter that a trustee who does not consider each criterion to the same degree will have to demonstrate that it was prudent to prefer one criteria over another. The fact that a list is set out in legislation will increase the responsibility placed upon directors to carefully consider each criterion and therefore increase their exposure to liability if they fail to do so.

- The amendments also state that a trustee must diversify the investments of trust property to an extent that is appropriate to;

  * the requirements of the trust; and

  * the general economic and investment market condition.

  This means that simply placing monies into one investment, whether it be a G.I.C. or even a "balanced" mutual fund, may not satisfy the requirement that trustees "diversify" the investments.

- Although the amendments will permit trustees to obtain investment advice and to rely upon that advice, the trustees are still not permitted to delegate investment decisions to an investment advisor or manager. While trustees will not be liable for the investment advice that has been relied upon, the relief from liability only exists if a prudent investor would rely upon such advice. As a result, the decision to retain an investment advisor may result in the same liability for directors as if they were making the investment decision themselves.

- Trustees will be relieved from liability only if the loss resulted from an investment plan that comprised reasonable assessments of risk and that a prudent investor would adopt in

comparable circumstances. As a result, there will be very little practical protection for trustees under the amendments. More importantly, the relief that is currently available for technical breaches of trust under Section 35 of the *Trustee Act* will no longer be available for breaches of trust relating to investments. This unfortunate restriction means that directors who are found in breach of trust will not be able to look to the court for relief, even if the directors acted in good faith.

- Although the amendments state that if a trustee is liable, the court can look at the overall performance of investments in assessing damages against the trustee, each separate investment decision will still result in a separate finding of breach of trust and resulting damages on a personal basis, with the remedial provisions applying only to the assessment of damages, not to a finding of breach of trust.

4. Application of New Standard

When Bill 25 is proclaimed in force, then the new "prudent investor" standard will generally apply to all Ontario charitable trusts or charities incorporated by letters patent or by special Acts, (except for special Act corporations with an existing investment power), and all federal or other provincial incorporated charities that have their head offices or principal places of business in Ontario and do not have specific statutory investment powers, (such as the investment authority under the *Federal Insurance Companies Act).* As a result, the new trustee investment power proposed will have much broader application than the current investment provisions under the existing *Trustee Act*

Practical Consequences of New Investment Powers for Charities

When the Ontario Government introduced Bill 25, and before that Bill 122, to amend the *Trustee Act*, it was generally perceived as providing immediate relief from the overly restricted investment powers of the *Trustee Act.* Although the proposed investment power set out in Bill 25, when it is proclaimed, will provide more flexibility for professional trustees and those who act under testamentary and *inter vivos* trusts, its application to directors of charities will have serious consequences which may not have been fully understood by the Government when Bill 25 was given first reading.

Some of the more important consequences that charities operating in Ontario effected by the new legislation will need to deal with are summarized below as follows:

Since the remedial provisions of section 35 of the *Trustee Act* will no longer apply to investments, charities should review both their current and past investments to determine if investment decisions have violated the list of permitted investments under the current *Trustee Act* and, if so, whether they should consider applying for relief from technical breach of trust now under Section 35 of the *Trustee Act* before its application to investment is repealed.

- As a result of the mandatory criteria that will need to be considered by boards of charities, directors of charities will now be called upon to

account not only for potential losses that occur from investment decisions but also for income that might have been earned through more creative and aggressive investment choices. This not a responsibility that most directors are either aware of or are prepared to assume.

- The board of directors will need to become familiar with the new investment provisions and consider each of the mandatory investment criteria before making any investment decisions. The board may need to record each investment decision with reference to the mandatory investment criteria having being considered and why some criteria may have been given greater consideration than others.

- The board of a charity, even a small charity, will need to consider retaining an investment advisor with a proven reputation to provide carefully documented investment recommendations to the board. The investment advisor should provide a written report, which in turn should be attached to the board minutes. The board of a charity will need to carefully monitor the performance of its investment adviser and be prepared to change advisors if a "prudent investor" would do so in similar circumstances.

- Investment decisions should be made by the full board of directors, instead of only an executive committee or finance committee, since the decisions that are made will have a direct impact upon every board member, whether they were part of the investment decision or not.

- The board of directors for a charity will need to meet as frequently as investment decisions are required to be made, which in turns means that board members will need to attend every board meeting, unless absolutely necessary, since absence from board meetings will not necessarily relieve them from liability for investment decisions that are made in their absence.

- If a board member disagrees with an investment decision, it is essential that the board minutes reflect the objection by a board members. If a board member did not attend a board meeting and subsequently learns of an investment that they do not agree with, that board member should voice his or her opposition at the next board meeting (and preferably in writing to all other board members before the board meeting takes place).

- Board members of a charity need to be thoroughly informed about the responsibilities that they face in making investment decisions as a "prudent investor" would. This would also require board members to become generally well informed on investment matters.

- In recognition of the increased responsibility and liability placed upon directors of charities concerning investment decisions, unless a board member is prepared to fulfil the fiduciary obligations placed upon them under the amendments to the *Trustee Act*, they should carefully consider whether they should continue as a member of the Board of Directors.

3. PROPERTY UPDATE

BY: TERRANCE S. CARTER, TRADE-MARK AGENT

A. THE IMPORTANCE OF TRADE-MARKS FOR CHURCHES AND RELIGIOUS CHARITIES

1. Introduction

With the exception of a few large religious charities, many churches and religious charities may not understand what trade-marks are, let alone the value of the trade-marks that they may have acquired over time, or for that matter the steps that should be taken to protect the intellectual property rights that are associated with their trade-marks. It is often only when a problem develops that a charity is willing to become informed about trade-marks. As often as not, the charity learns with surprise or dismay that it is too late for the charity to do anything to reverse the damage that has been done to the trade-mark rights that they may once have had.

To provide information on this very important area of the law that effects charities, this and upcoming issues of the *Church & the Law Update*, will contain a number of short articles that will explain trade-mark issues as they affect charities and not-for-profit organizations.

2. What is a Trade-Mark

A trade-mark basically identifies the source of goods and services associated with a particular mark and in so doing represents the goodwill of a charity. While most charities are not in the business of manufacturing or selling goods, they are generally involved in the performance of some sort of service and as such would generally fulfil the definition of a trade-mark under the *Trade-Mark Act* (Canada). Although trade-marks are recognized and protected at common law, they can receive significant additional protection by registration under the *Trade-marks Act* as will be discussed later.

3. What Do Trade-Marks Consist Of?

While the *Trade-marks Act* defines what a trade-mark consists of, it does not define what constitutes a "mark". In practical terms, a mark consists of any of the following:

- a single word, i.e.,

  "Lego";

- a combination of words, i.e.,

  "Miss Clairol";

- a logo or symbol, i.e.

  the big *"M"* in McDonalds;

- a slogan, i.e.

  "you deserve a break today"

- a package or container design, i.e.

  "the Coca-Cola bottle"; or

- even a telephone number, i.e.

  "967-1111" for Pizza Pizza.[(1)]

It is also possible to have more than one trade-mark used in combination,

such as a word trade-mark that is used in conjunction with a logo. For example, where a university uses both its name and a school crest in close association of each other.

4. Examples Of Trade-Marks Involving Charities

A trade-mark used in conjunction with the operations of a charity is usually any word, combination of words or logo that is used as the primary identifier of the operations of a charity. This could consist of any one of the following combinations:

- a full name of the charity, i.e.

  "ABC Relief Agency of Canada";

- a portion of the charities name by which the charity is known by the public, i.e.,

  "ABC Relief Agency" of *ABC Relief Agency* of Canada;

- a division of a charity, i.e.

  "ABC Children's Club", a division of *ABC Relief Agency* of Canada;

- a logo, i.e.,

- an emblem or crest; and

- a slogan, i.e.

  "Here's Life".

5. Why are Trade-Marks Important to Charities?

A fundamental question to this topic is why is it important for a charity to protect its trade-marks? The answers are set out below as follows:

Trade-marks constitute the goodwill of a charity, not only in relation to goods and services but also in the context of both present and future fundraising. In this regard, a charity's trade-mark becomes a focal point for:

* donations from regular supporters of a charity;

* donations received from estates;

* enhancing the present reputation of a charity with current supporters; and

- developing the future potential of a charity to expand its charitable activities.

- Trade-marks distinguish one charity from another. In an increasingly crowded charitable market, the ability of a charity to successfully distinguish itself from other charities is becoming a major concern. In addition, when a trade-mark is used to identify a charity that operates as a branch of a main charity, such as where a charity establishes a chapter, the trade-mark is essential in developing a common identity for the charity in the minds of the public.

- Trade-marks have both present and future marketing value in relation to the sale of related items associated with the services of a charity, such as books, tapes, videos, and promotional materials, as well as facilitating access to the charity on the Internet or other forms of electronic communication.

- Trade-marks may have significant licensing value by licencing a trade-mark to an associated charity located either in Canada or aboard or licensing for commercial or sponsorship

purposes. Many businesses are prepared to pay a licensing fee for the right to be associated as an official sponsor of an event that is held in the name of a charity. The most obvious example in this regard is the considerable licensing value associated with the trade-marks of the Canadian Olympic Association that entitle companies to advertise that they are an "official sponsor" of Canadian Olympic events.

- Trade-marks are fragile assets, the value of which can be lost or seriously eroded through error of commission and/or omission. As a result, failure to properly identify and preserve trade-mark rights could lead to the eventual loss by a charity of the right to use its name or other similar key trade-marks in its operations.

  Future issues of the *Church & the Law Update* will explain how trade-marks can become wasting assets for charities, the advantages of trade-mark registration, the acquisition of trade-mark rights, trade-marks and internet domain names, trade-mark licensing, proper use of trade-mark, and how to effectively protect trade-marks.

B. WEB SITE ISSUES FOR CHARITIES

BY: MERVYN F. WHITE

Despite popular belief to the contrary, the Internet is not lawless. It is governed by all of the same laws which affect us in our daily lives. As a result, maintaining a web site can expose charities and not-for-profit organizations to a variety of criminal and civil sanctions if they are less than careful. The following are a number of areas of concern for charities web site owners.

Firstly, remember that the Internet is international in nature. What the charity decides to post to your web site can be viewed anywhere in the world. As a result, what you post on your web site may expose you to the laws of every jurisdiction in the world.

Secondly, the laws of copyright are applicable to the Internet. Unauthorized use of material created by someone else may expose you to an action for copyright infringement.

Thirdly, trade-mark law is applicable to your web site. If your organization makes use of the trade-mark of another without their permission, whether to establish a hyperlink, a meta-tag, or to promote the services you have to offer, then you will likely be exposing your organization to an action for trade-mark infringement.

Fourthly, if your domain name (ie. "abc.org") is the trade-mark of another, then you may also expose your organization to an action for trade-mark infringement. At the same time, taking appropriate steps to secure your domain name is highly recommended. Those who fail to act may find themselves in the unenviable position of having to purchase their domain name from someone else who had the foresight to register it first. In addition, the domain name should be protected by obtaining a trade-mark registration.

Fifthly, defamation can occur easily on the Internet. E-mails cannot be considered as privileged or private communication. Bulletin Boards and Chat Rooms allow the disenchanted to easily commit libel or even promote hatred.

Charities or web site owners should carefully review anything posted to their site, or

they could find themselves unwittingly publishing libelous material.

A number of web site design practices have recently engendered litigation in the United States, and should be avoided where possible. These include the following practices:

(i) hyperlinking without permission to other web sites;

(ii) hyperlinking to pages on another web site, which are below the home page of the other web site;

(iii) using a meta-tag which is the trademark of someone else without their permission, in order to draw searches to your web site;

(iv) using 'framing' in order to pass off the material of another web site, which has been hyperlinked into the frame, as your own, or in combination with your own promotions and advertisements;

(v) spamming --mass e-mail distribution-- can lead to civil actions for damages as well as the anger of recipients;

Some easy rules of thumb are: Firstly, don't use what is isn't yours, or attempt to gain benefit from the work of others without first obtaining their permission and secondly, ensure that you use your web site in a civil manner, always with an eye to how others will receive what you have to say**.**

C. E-MAIL ISSUES FOR CHARITIES

BY: MERVYN F. WHITE

Electronic mail (E-mail) has become a common form of communication between users of the Internet. The reasons for this are obvious: ease of use; low cost; the ability to produce a formal 'hard' copy, or to delete received messages.

Charities using E-mail should remember that the system is far from perfect, and that ensuring confidentiality and privacy is nearly impossible, unless highly sophisticated, and often expensive, encryption technology is used. Failing the use of such technology, caution should be exercised over what is sent by E-mail.

The problem with E-mail privacy arises from the fact that once an E-mail is sent from the host computer to a recipient computer, the message is reduced into digital information which is transmitted over open lines of communication and is easily intercepted. Also, problems with ensuring that the proper address of the recipient computer is used can lead to E-mails being inadvertently sent to the wrong computers. E-mail addresses are often confusingly similar in nature, especially when the name used in the address is common, such as the last name "White". There are numerous "White"s with E-mail addresses and often little differentiates those **addresses.**

For charities, E-mail privacy issues may involve a number of administrative matters, including E-mailing sensitive financial information, donor lists, confidential employee information, information related to internal disciplinary proceedings of a private nature disclosed to a minister by a member of his congregation. All such information may prove damaging if improperly disclosed, and may expose a charity and possibly its directors to claims for damages arising from causes of action such as breach of trust, libel, or interference with economic interests. Further, an improper and imprudent disclosure under such conditions would likely seriously damage the general reputation of a charity and would strain the re-

sources of the church's ability to protect their interests.

To ensure that privacy of E-mail communication is maintained, users can make use of encryption technology. This can entail considerable expense which will negate any advantages gained through the use of E-mail. A more reasonable answer, at present, is to ensure that E-mail communications are of a relatively harmless nature. One way to look at the issue, is to view each document E-mailed as being open to view by anyone wishing to see it. If such openness poses problems with an E-mail, then don't send it. While this may restrict your use of E-mail, it will also ensure that your interests are not compromised, and will reduce your chances of facing legal liability for a libelous or prejudicial E-mail being read by unintended recipients.

4. GENERAL CHARITABLE LAW UPDATE

A. Y2K LEGAL ISSUES

The next issue of the *Church & the Law Update* will include an article on legal issues for charities and not-for-profit organizations arising out of the pending Y2K computer crisis.

B. WEB SITE RESOURCE MATERIALS

Seminar materials, back issues of *Church & the Law Update* and *Church & the Law Update*, as well as full texts of selected articles and commentaries are available at our law firm web site at www.charitylaw.ca .